

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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| NAVIENT SOLUTIONS, LLC, | . | Civil Action No. 1:19cv461 |
| | . | |
| Plaintiff, | . | |
| | . | |
| vs. | . | Alexandria, Virginia |
| | . | August 17, 2021 |
| THE LAW OFFICES OF JEFFREY | . | 9:52 a.m. |
| LOHMAN, et al., | . | |
| | . | |
| Defendants. | . | |
| | . | |
| | . | |

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME VII

APPEARANCES:

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|---|---|
| FOR THE PLAINTIFF: | GEORGE R. CALHOUN, ESQ. Ifrah PLLC 1717 Pennsylvania Avenue, N.W. Suite 650 Washington, D.C. 20006 |
| FOR THE LOHMAN DEFENDANTS: | JEFFREY E. GRELL, ESQ. Grell Feist PLC 825 Nicollet Mall, Suite 625 Minneapolis, MN 55402 and THOMAS F. URBAN, II, ESQ. Fletcher, Heald & Hildreth, PLC 1300 N. 17th Street, Suite 1100 Arlington, VA 22209 |
| FOR DEFENDANTS GST FACTORING, INC.; GREGORY TRIMARCHE; AND RICK GRAFF: | MIKHAEL D. CHARNOFF, ESQ. Perry Charnoff PLLC 1010 N. Glebe Road, Suite 310 Arlington, VA 22201 |

(Pages 1415 - 1443)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 ALSO PRESENT: JEFFREY LOHMAN, ESQ.

3 OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR
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5 401 Courthouse Square
6 Alexandria, VA 22314
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1 P R O C E E D I N G S

2 (Jury out.)

3 THE CLERK: Civil Action 19-461, Navient Solutions,
4 LLC, versus the Law Offices of Jeffrey Lohman, et al. Will
5 counsel please note their appearances for the record.

6 MR. CALHOUN: Good morning. George Calhoun for the
7 plaintiff.

8 THE COURT: Good morning.

9 MR. GRELL: Jeff Grell for the Lohman defendants.

10 THE COURT: Good morning, Mr. Grell.

11 MR. CHARNOFF: Good morning, Your Honor. Mike
12 Charnoff on behalf of GST, Greg Trimarche, and Rick Graff.

13 THE COURT: All right. So first of all, do we have a
14 disc, a thumb drive, or both?

15 MR. GRELL: We have -- after longer than it should
16 have taken, we do have a disc, and Mr. Calhoun and I were
17 talking. I wanted him to acknowledge that he chose not to
18 review this for the record, but there were some -- we had some
19 discrepancies between the Court's record of what was admitted,
20 and we got it worked out.

21 And then, of course, there's the one stipulation that
22 you read into the record that we, that we didn't -- there was a
23 hard copy, but we didn't have a copy with us last night, so we
24 couldn't scan it, so in that exhibit, I just put a placeholder
25 that says "Only a paper copy is available."

1 So I don't know what else we could have done with
2 that, but --

3 THE COURT: All right. I mean, you know, you're
4 proceeding now at your own risk, all right? We've had a long
5 trial. I'm assuming -- Mr. Calhoun, you can't complain if you
6 haven't looked at the exhibit. I'm sure --

7 MR. CALHOUN: No, we provided ours; he provided
8 theirs.

9 THE COURT: Okay.

10 MR. CALHOUN: I looked at the lists. The lists are
11 good.

12 THE COURT: That's fine, all right.

13 Do you have a --

14 MR. GRELL: We gave you a copy of the file that we
15 burned. That's yes, right? Say yes.

16 MR. CALHOUN: Yes.

17 THE COURT: Mr. Calhoun?

18 MR. GRELL: Thank you.

19 THE COURT: All right, all right. Hopefully it
20 works.

21 You had mentioned last night you were also going to
22 bring a thumb drive just in case. Do you have one or not?

23 MR. CALHOUN: I'll have to see -- Tom may have.

24 Tom, do you have a thumb drive with this?

25 MR. URBAN: No. No one asked for a thumb drive.

1 THE COURT: Okay. Well, I'm going to assume that
2 works. We were told last night -- unfortunately, they then
3 said, IT later on said they could take either.

4 MR. GRELL: Well, if we need a thumb drive, we can go
5 back to the office and get it.

6 THE COURT: All right. Hopefully this is going to
7 work just fine. If you'll hand that up to Mr. Hendrick? And
8 we will keep that as part of the file, obviously, for purposes
9 of the appeal -- any appeal.

10 All right. Now, in terms of the question that came
11 in last night from the jury, which was, again: "Could the
12 Court provide any guidance or clarity on how to separate the
13 individual from their business as we deliberate?"

14 And what I intend to do, we've given you Proposed
15 Jury Instruction 55, liability of corporations, and there we've
16 said: "A corporation is a creation of state law and is
17 considered to be a person." I mean, that's an absolutely
18 correct statement of the law. "However, it can only act
19 through its employees, agents, directors, or officers.
20 Therefore, a corporation is responsible for the acts of its
21 employees, agents, directors, and officers as long as the acts
22 of its employees, agents, directors, and officers are performed
23 within the scope of their authority."

24 I mean, that's, you know, an absolute solidly correct
25 statement of the law. I would also add, however, I'm going to

1 reread to them Jury Instruction No. 3, which reminds them that
2 you should consider and decide this case as a dispute between
3 persons of equal standing in the community, that instruction,
4 and I'm going to also repeat the sentence from Instruction 4:
5 "Each defendant is entitled to your separate consideration."

6 So that's what I intend to tell them. So I will be
7 giving them a new Instruction 55 to add to their packet and
8 focusing -- I will reread Instruction 3 and that one sentence
9 from 4. That's how I plan to answer the question.

10 So, Mr. Calhoun, do you have any objection to that?

11 MR. CALHOUN: No objection, Your Honor.

12 THE COURT: All right. Mr. Grell?

13 MR. GRELL: Yes, Your Honor. I hate to be the bearer
14 of bad news, but respondeat liability -- respondeat superior
15 liability under RICO is a very, very complicated thing, and
16 moreover, this would work if we were talking about a negligence
17 claim, but intentional torts by nature are not within the scope
18 of authority.

19 When I sent my e-mail this morning, I was talking
20 about the corporate intent idea, the control group. This is
21 not -- I said state of mind or corporate intent is okay with
22 me.

23 This is not -- this is -- intentional torts are by
24 nature not within the scope of authority. So the only way this
25 instruction would be accurate is if you also instructed: And

1 fraud is not within the scope of an employee's authority.

2 So -- or you give a -- you give a standard
3 instruction on corporate intent, state of mind.

4 THE COURT: Well, you haven't given me one, all
5 right? I mean, again, this is an opportunity for the counsel
6 to assist the Court. Last night, I think you said you didn't
7 want any at all, but, I mean, just saying, you know --

8 MR. GRELL: I get it, Your Honor. And I thought we
9 were -- I thought we were on the same page when I left, and I
10 looked and I didn't, I didn't --

11 THE COURT: I can't find one. I mean --

12 MR. GRELL: I can't find one either.

13 THE COURT: Yeah.

14 MR. GRELL: But I don't think this is appropriate,
15 and I said this morning we would be fine with no instruction.
16 I think this is, this is probably more harm than good,
17 especially on appeal.

18 I mean, we'll object to this. You obviously are
19 going to rule however you rule, but we will -- we do object to
20 this instruction.

21 THE COURT: Well, again, I think in some respects,
22 Mr. Calhoun, you've made it more difficult because of --
23 especially because of the RICO statutes in here.

24 But this jury has worked to -- they're all here.
25 They're going to start deliberating early today, and I don't

1 think it's fair to make a jury just struggle with, with legal
2 concepts.

3 This -- what I'm giving them is clear, solid,
4 established, basic legal principles of corporate liability. I
5 agree there are all kinds of subtleties in the law. This is
6 not a law school class for them. They're trying to decide this
7 case.

8 But, Mr. Charnoff, for the record, do you want to say
9 anything?

10 MR. CHARNOFF: I do, Your Honor. I do not object to
11 Your Honor rereading the section from Instruction 4. My
12 position is that's the only appropriate thing to do because
13 anything else deemphasizes other instructions.

14 I mean, the answer is -- the question, the question
15 was basically how do we have clarity between or separation
16 between the individuals and the corporations? I mean, the
17 answer is still plaintiff has a burden to demonstrate liability
18 with respect to each of those five individual parties. If they
19 can't figure that out, I'm not trying to make them struggle,
20 but that's, that's the plaintiff's burden. It's not my job to
21 cure plaintiff's inability or failure to put on the evidence
22 that would make that clear to them.

23 And so -- and I do join Mr. Grell's critique. You
24 know, within the scope of their authority, every, every cause
25 of action that all of the defendants are facing here, they're

1 all intentional torts.

2 And I think he's correct. By definition, it's not,
3 you know, unless you've got previous authorization or
4 subsequent ratification, which there was no evidence of and
5 plaintiffs didn't ask for an instruction on that, and Your
6 Honor correctly didn't give the punitive instruction, I think
7 this could only be misleading. I mean, they're going to say,
8 oh, it's within the scope, you know -- I understand why Your
9 Honor wants to give it. I understand why you're trying to help
10 the jury. I think this is going to mislead them in a very
11 specific way, and so I, I object to this instruction.

12 THE COURT: Well, the only concern I have with the
13 instruction -- and again, we actually took it from -- the Ninth
14 Circuit has an instruction very much -- this is mostly a Ninth
15 Circuit instruction, and it is a correct statement of corporate
16 liability.

17 MR. CHARNOFF: I don't disagree, Your Honor. I just
18 don't think it applies here because again, this is not -- this
19 is not a negligence. This is not the factory accidentally
20 dumped oil into the river, or whatever it is. You know, these
21 are all intentional acts.

22 And so this is, this is not -- you know, it's true a
23 corporation is a creation of state law. That's a true
24 statement. I mean, maybe the first sentence of that is
25 relatively, you know, innocuous, but saying the corporation is

1 responsible for the acts of all of its employees and agents,
2 etc., so long as they're performed within the scope of their
3 authority, that's not true with respect to intentional torts,
4 and every tort they've pled here is an intentional tort.

5 I don't think it's -- I don't think it's a correct
6 statement of law as it applies to our facts and as this case
7 has been pled here.

8 THE COURT: Okay. Mr. Calhoun?

9 MR. CALHOUN: Your Honor, I just want to point out
10 with respect to the RICO claim in particular, overt acts taken
11 in furtherance of a conspiracy do not have to be independently
12 tortious, so if employees of a corporation take acts to further
13 the conspiracy, those acts don't have to be intentional torts
14 in order to further the conspiracy. They would still be acts
15 within the scope of their employment on behalf of the company.

16 So I do think this is appropriate. You know, if we
17 were dealing with an employee punches somebody in the face and
18 whether that was or was not within the scope of their
19 authority, I could see the dispute here, but that's, that's not
20 the kind of thing we're talking about.

21 MR. GRELL: And I would agree with that, Your Honor.
22 I don't think this is an issue with RICO, because you're
23 talking about Lohman being the operator and manager, and he
24 operates and manages this enterprise, his employees, and all of
25 the other people in the enterprise are part of the enterprise.

1 He's only -- this is not a RICO issue in terms of
2 the, in terms of the scope of liability that's in this, in this
3 instruction that you're going to give. It's about the -- he's
4 alleging effectively that you punch somebody in the face by
5 committing fraud or tortious interference.

6 It's with regard to these common law claims that I
7 think it's -- and I am just concerned that -- it's a very law
8 professor type of thing, the respondeat superior issue under
9 RICO that doesn't really apply here, but it's the two
10 intentional tort claims that I'm more concerned about.

11 THE COURT: Well, I mean, I recognize the danger here
12 is opening the door to then what do you mean by the scope of
13 their authority? I mean, that's the only danger that I see
14 with this instruction.

15 So -- all right. Well, let's get the jury in here.
16 I guess I am going to pull back on this. I'll just tell them
17 the corporation is a creation of state law and is considered to
18 be a person in the eyes of the law, and remind them about
19 consider each one. I'll leave off the rest of it. And if we
20 get another question, however, I may have to do it.

21 MR. CHARNOFF: Thank you, Your Honor.

22 THE COURT: While he's bringing the jury in, I will
23 also -- I don't think they told us -- did they tell us
24 yesterday what time they're going to take their mid-morning
25 break? I don't think they did in their note.

1 MR. CALHOUN: I think they just said their lunch
2 break at one, Your Honor.

3 THE COURT: Yeah. I'll try to clarify if they're
4 going to take a mid-morning break.

5 And you just need to let us know if you're going down
6 to the fourth floor so we know where to get you if there should
7 be a question. I think we're going to get questions from this
8 jury, so don't be surprised.

9 (Jury present.)

10 THE COURT: Well, good morning, ladies and gentlemen.
11 Once again, you've set a record for all being here nice and
12 early, and again, we all appreciate that.

13 Any problems last night? I hope you-all continued to
14 behave and everyone is feeling well?

15 (Jurors nodding heads.)

16 THE COURT: We'll read your question in a second
17 here.

18 First of all, I did want to explain to you that we do
19 have set up downstairs a laptop with a disc that should have
20 all the exhibits except for one, which is the stipulation.

21 MR. GRELL: 2191.

22 THE COURT: 21- --

23 MR. GRELL: -- -91.

24 THE COURT: 2191. So that one you only have in
25 paper, all right? But that's a stipulation. It's pretty

1 straightforward. I mean, it's not a long document, so that
2 shouldn't be a problem for you.

3 If you have problems, our IT people or my courtroom
4 deputy, Ms. Guyton, will be down there to make sure you know
5 how to work the machine. If for any reason you're having
6 technical issues, I think you're learning the procedure. Knock
7 on the door. But we do need a note just for purposes of the
8 record. Anything, if it's too hot, too cold, you need more
9 water, just please put it in a note and have the foreperson or
10 one of the other jurors sign it, all right? Just so we have a
11 record of interactions with the jury.

12 I wanted you to know, because we did give you jury
13 instructions, you're free to write on those instructions, and
14 if you need more paper, we can get more paper for you, but each
15 of you has a set of the instructions so that you can be
16 following them and making whatever notes you need on them,
17 okay?

18 Now, last night, you gave us a question, and that
19 was: "Could the Court provide any guidance or clarity on how
20 to separate the individual from their business as we
21 deliberate?"

22 What I'm going to tell you is the following: A
23 corporation is a creation of state law and is considered to be
24 a person in the eyes of the law.

25 And then I've already given you Instruction No. 3,

1 and I just want to repeat it for you, that you should consider
2 and decide this case as a dispute between persons of equal
3 standing in the community, of equal worth, and holding the same
4 or similar stations in life.

5 A corporation is entitled to the same fair trial as a
6 private individual. So all persons, including the plaintiff,
7 Navient Solutions, LLC, and defendants, the Law Offices of
8 Jeffrey Lohman, Jeffrey Lohman, Rick Graff, Gregory Trimarche,
9 and GST Factoring, Inc., stand equal before the law and are to
10 be treated as equals.

11 And each defendant -- and so we have five defendants
12 in this case -- is entitled to your separate consideration.

13 So I hope that assists you. We're often confined by
14 various legal principles as to how we answer your questions,
15 and I'm not sure we always totally understand your questions.

16 So let me see what else we have here. Oh, good, this
17 is a schedule for today. So the jury is going to start at ten
18 o'clock, take a mid-morning break between 11:30 and 11:45, the
19 lunch hour of one to two, afternoon break at 3:30, and today
20 you want to end at six. And that's pretty much the schedule
21 we've been on, so that's fine.

22 And during your lunch hour, are you planning to
23 leave?

24 (Jurors nodding heads.)

25 THE COURT: Some of you plan to leave the building,

1 which is perfectly all right, good. If some of you stay in the
2 building, because it may be pouring rain again today, just
3 remember you should not be deliberating, all right? So when
4 you're on break, you're on break. Very good.

5 Then, counsel, I think there's nothing further we
6 need to do with the jury. Hopefully the disc will work, and we
7 will go ahead and recess court to await your decision. Thank
8 you.

9 (Recess from 10:09 a.m., until 2:02 p.m.)

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1 A F T E R N O O N S E S S I O N

2 (Jury out.)

3 THE COURT: Well, as I told you, these jurors read
4 those instructions and really think about them carefully. So
5 the latest question is: "Is there a legal or common definition
6 of 'sham' as referenced in Jury Instruction No. 49 that we
7 should use during deliberations?"

8 All right, Mr. Grell, that's your instruction.
9 What's your view? Because I have a thought.

10 MR. GRELL: Well, it is an important issue to us, but
11 it was changed from my instruction, so I would urge us to go
12 back to what I suggested in the beginning, which was successful
13 litigation is not sham litigation, which is --

14 THE COURT: But, you know, that's not the Fourth
15 Circuit's approach.

16 MR. GRELL: Well --

17 THE COURT: That, that concept comes from a single
18 case. I mean, the Fourth -- that Fourth Circuit decision, I
19 think, walks that through. We're talking about a pattern of
20 litigation here.

21 MR. GRELL: Well, but let me explain. So the way
22 that they have laid out their damage claim is it's case by case
23 by case by case. And the jury could go through and say, okay,
24 this one was successful; this one was not successful. And they
25 could knock out at least the successful elements of their

1 damage claim.

2 If they had litigated this as a pattern that resulted
3 in an, in an aggregate number, then I could see where, yeah,
4 the jury can't look at these on a single-by-single-by-single
5 basis. But here -- again, it was their decision to try this
6 case the way that they tried it, and they have tried it as
7 here's our damage claim, and it's made up of all of these
8 individual lawsuits. Okay?

9 And I can see there are benefits to that, but there's
10 also a disadvantage to that, which means the jury can go
11 through and say -- who knows whether they think a settlement is
12 successful or not, but they can at least say, okay, well, this
13 one was successful, this one wasn't successful. They can
14 decide that fact for themselves.

15 I don't know what they think successful is, but the
16 way it's presented, they should be able to go case by case by
17 case by case and make that determination if they choose to. So
18 that would be my position on that.

19 THE COURT: Well, all right. My inclination in
20 looking again at the Fourth Circuit language would be to tell
21 them that sham litigation is a pattern of litigation that
22 abuses the adjudicatory process, and then the rest of that
23 instruction explains in evaluating that, what you look at, the
24 number of cases that were filed, the number that were won, the
25 number that were lost, the number that were settled.

1 That's exactly what that case says.

2 MR. GRELL: And I thought -- I didn't object to your
3 final instruction. I thought it was workable, and I think
4 it's -- that's why I didn't object to it in the end, but I
5 think that we just tell them to go back and read the
6 instruction. I don't think any further instruction is
7 necessary.

8 THE COURT: All right. Let me hear from Mr. Calhoun.

9 MR. CALHOUN: Your Honor, we wouldn't have any
10 objection to the clarification you just referenced. I do think
11 adding the language that Mr. Grell suggested would, would not
12 be consistent with *Waugh Chapel* and be inconsistent. You know,
13 if we just go back and tell them the factors are set out in the
14 instruction and you need to use your own judgment, that's fine,
15 too.

16 THE COURT: All right. I think we're going to bring
17 the jury up. It will take a couple of minutes for them to get
18 up here. And what I'm going to tell them is rather than
19 defining the word "sham," I'm going to say that sham litigation
20 is a -- would be a pattern of litigation that abuses the
21 adjudicatory process. In considering whether there has been
22 sham litigation in this case, you should consider -- and I'll
23 go back and rephrase -- repeat the language in No. 49.

24 That means you may consider the total number of
25 arbitration and federal lawsuits the Lohman defendants filed

1 against Navient Solutions; how many of those arbitrations or
2 lawsuits the defendants dismissed, won, or lost; how many of
3 those arbitrations or lawsuits the plaintiff settled; any
4 evidence as to the subjective motivation of the defendants in
5 filing the arbitrations or lawsuits; the objective merits of
6 the arbitrations or lawsuits that were filed; and whether those
7 arbitrations and lawsuits constitute an abuse of the
8 arbitration or judicial processes; as well as any other
9 evidence that they find relevant.

10 I think that's a proper statement of the law and
11 consistent with how the Fourth Circuit looks at the situation.

12 MR. GRELL: And you were just reading from the
13 original instruction.

14 THE COURT: Other than adding the -- the first
15 sentence being sham litigation is a pattern of litigation that
16 abuses the adjudicatory process. In determining whether or
17 not --

18 MR. GRELL: I, I object to that because again --

19 THE COURT: But that is the Fourth Circuit's view
20 when you're dealing with more than one piece of litigation.

21 MR. GRELL: I just -- it's -- look, we have -- our --
22 a very -- an argument that we've made repeatedly is that they
23 failed to sustain a burden of proof, and every time we go back
24 and tell the jury, well, here's a little bit more information,
25 that helps plaintiff here.

1 If they didn't prove their case under the
2 instructions that we hammered out before, before closing and
3 everything else, that's on them. And we keep, we keep --

4 THE COURT: Well, look --

5 MR. GRELL: Every time we give them another
6 instruction, we help the plaintiff, and that's not fair to the
7 defendants.

8 THE COURT: I don't think it's helping either side.
9 I think it's helping the jury try to struggle with terminology
10 that is difficult. The word "sham" appears in the part of the
11 instruction of yours that was not changed. I took out that
12 middle section where you talk about, you know, it's not sham
13 litigation if you win the case, whatever that middle section of
14 it was, but those first two paragraphs were coming from -- were
15 uncontested.

16 And the word "sham" is what is used in the discussion
17 of this immunity, this *Noerr-Pennington* immunity.

18 So these are jurors. I mean, the word "sham" means
19 something that's disingenuous, that's not what it purports to
20 be, and in this case, I think not to give the jury some
21 assistance is, is wrong, unfair, and it's not prejudicing
22 either side.

23 MR. GRELL: Well, I think it's a fact issue, and I
24 think we've given them sufficient guidance to decide that fact
25 issue.

1 THE COURT: All right.

2 MR. GRELL: And that's my objection, and I'll leave
3 it at that.

4 THE COURT: All right. Well, I appreciate that. But
5 I'm going to have the jury brought up so that I can speak to
6 them about this, all right?

7 THE COURT SECURITY OFFICER: Yes, Judge.

8 THE COURT: So once they're here, I'll come back on
9 the bench, all right? Is there anything else before we bring
10 the jury back in?

11 (No response.)

12 THE COURT: No? All right, we'll recess court to
13 await the jury.

14 (Recess from 2:09 p.m., until 2:14 p.m.)

15 (Jury present.)

16 THE COURT: All right, ladies and gentlemen,
17 obviously, you're working very diligently and raising some very
18 astute questions. You've asked -- the latest question is for
19 us to help you in understanding whether there is a legal or
20 common definition of "sham," as referenced in Jury Instruction
21 No. 49 that you should use during your deliberations.

22 Basically, sham litigation would be a pattern of
23 litigation that abuses the adjudicatory process. Determining
24 whether or not a pattern of litigation abuses the adjudicatory
25 process, as I said in Instruction No. 49, you have to look at a

1 series of factors, and this would include the total number of
2 arbitration and federal lawsuits -- or federal lawsuits that
3 the Lohman defendants filed against Navient Solutions, LLC; how
4 many of those arbitrations or lawsuits the defendants
5 dismissed, won, or lost; how many of those arbitrations or
6 lawsuits the plaintiff settled; any evidence as to the
7 subjective motivation of the defendants for filing the
8 arbitrations or lawsuits; the objective merits of the
9 arbitrations or lawsuits the defendants filed; whether those
10 arbitrations or lawsuits constituted an abuse of the
11 arbitration or judicial processes; and any other evidence in
12 the record that you find relevant.

13 So that is how you approach the issue of whether or
14 not the pattern of litigation would be considered sham
15 litigation.

16 I hope that that clarifies it. Basically, it's all
17 there for you in Instruction No. 49, all right?

18 Is the temperature -- you can just nod your heads --
19 is the temperature better now in that room?

20 (Jurors shaking heads.)

21 THE COURT: It's still too cold? Is it still too
22 cold? Yes?

23 A JUROR: I think so.

24 THE COURT: All right, we'll try again. Again, I
25 warned you at the beginning of the case it's better to have too

1 much air floating through than not enough. We will try to get
2 it improved for you, but the system in this building is
3 somewhat dependent on the outdoor air, and I've had the same
4 problem in chambers. There are some days when I have to wear
5 almost a heavy jacket.

6 We want you to be comfortable, and we'll try to get
7 them to ratchet it up another degree or two, all right? And
8 then if it gets too hot, you know, we'll have them take it
9 down. But we have to keep the air circulating for your safety.
10 That's the point, all right?

11 Very good. Anything further for the jury, counsel?

12 MR. GRELL: No, Your Honor.

13 THE COURT: No?

14 MR. CALHOUN: No, Your Honor.

15 MR. CHARNOFF: No, Your Honor.

16 THE COURT: All right. Then we'll recess again to
17 await your decision.

18 (Recess from 2:18 p.m., until 3:09 p.m.)

19 (Jury out.)

20 THE COURT: I must say, I love our juries. The
21 latest question is, and we all missed it: "Multiple jurors
22 have notes on Exhibit 450, but it is not in the binders or on
23 the disc. Can we confirm if 450 was allowed into evidence? If
24 it was, could we have a copy?"

25 Now, because we had to switch courtroom deputies, in

1 fact, 450 was apparently admitted, but for some reason, the
2 right notation was not made in the deputy's notes. So when
3 Ms. Guyton read the list, my notes don't reflect 450 having
4 been admitted, but it was, in fact, admitted.

5 You-all apparently weren't keeping track of stuff
6 either because it's not on the disc.

7 So is there a 450 that can be retrieved quickly?
8 It's some sort of an e-mail. I looked up real quickly on your
9 index.

10 MR. CALHOUN: Your Honor, I have extra copies of my
11 binders in my car, so I could probably go grab it.

12 THE COURT: All right. It's not on the disc.

13 MR. CALHOUN: I mean, I also have it on my laptop.
14 So I think if we have a flash drive or something, I can pull it
15 up on my laptop right now, but --

16 THE COURT: If it's just one e-mail, it's probably
17 easier just to do it as one piece of paper.

18 MR. URBAN: No, I was just going to say, I mean, we
19 got the plaintiff's exhibits from them, and 450 was not among
20 them.

21 THE COURT: No one's at fault.

22 MR. URBAN: No, no, no.

23 THE COURT: They worked off of what we had. The
24 mistake was a notational error by the person who was
25 substituting for Ms. Guyton. It's no big deal, but it shows

1 you how perceptive this jury is that, I mean, they're keeping
2 such notes. So for what it's worth, again, they're really
3 going to go through this record carefully.

4 So, Mr. Calhoun, as soon as you get 450 -- what?

5 THE CLERK: Anneliese has a thumb drive with all of
6 the exhibits on it.

7 THE COURT: Do you have 450 on your thumb drive?

8 THE COURT REPORTER: Yes, but it's in my office.

9 THE COURT: We can probably retrieve yours faster.
10 Can you print it out from that?

11 THE COURT REPORTER: Yes.

12 THE COURT: All right. I'm just going to write back
13 to them on the note -- and we'll give you the note for your
14 records -- "We'll have 450 for you in a few minutes."

15 Is that all right for everybody?

16 MR. GRELL: Yes.

17 THE COURT: Yes? All right, let me do it right now.

18 MR. GRELL: Your Honor, if we could get a copy of
19 this --

20 THE COURT: Yep.

21 MR. URBAN: Your Honor, may I be excused? I'll just
22 run get my computer, and I can show it to him.

23 THE COURT: Okay. But in the meantime, Ms. Thomson
24 is going to go down and make us a copy.

25 MR. URBAN: Oh, I'm not saying -- just for our

1 purposes so that we can see what it is. If you'll allow me to
2 be excused?

3 THE COURT: Yes, you're excused.

4 All right, the note I'm writing back to the jury is:
5 "We'll have Exhibit 450 for you in a few minutes."

6 Any objection to that?

7 MR. CALHOUN: No, Your Honor.

8 MR. CHARNOFF: No, Your Honor.

9 THE COURT: All right. Well, we'll make a copy of
10 this for you so you have it for your records, all right?

11 We'll recess court to await their decision.

12 (Recess from 3:13 p.m., until 3:47 p.m.)

13 (Jury out.)

14 THE COURT: All right, we have another question about
15 exhibits. This time: "Multiple jurors have notes on Exhibit
16 28, but it is not in the binders or on the disc. Can we
17 confirm if Exhibit 28 was allowed into evidence? If it was,
18 could we have a copy?"

19 None of our records show that 28 is in evidence.
20 Mr. Calhoun, this would have been one of your exhibits.

21 MR. CALHOUN: Ours did not either.

22 THE COURT: All right. So I'm going to tell them
23 it's not in evidence. That's the answer, okay?

24 Is there any issue?

25 MR. GRELL: No, Your Honor.

1 MR. URBAN: No, Your Honor. Thank you.

2 THE COURT: All right. We'll give you a copy of this
3 for your records.

4 And again, it shows you the jury is going to go
5 through, I think, exhibit by exhibit, so I think you can expect
6 to be here tomorrow as well, all right, if not later than that.
7 We'll start getting worried on Friday.

8 Which of you is not -- Mr. Calhoun, you're not
9 available past Friday? I mean, you have other team members.
10 Somebody else can be here in your place.

11 MR. CALHOUN: Either I or someone will be here either
12 way.

13 THE COURT: All right. Mr. Charnoff, you're across
14 the hall?

15 MR. CHARNOFF: I will be in trial across the hall.

16 THE COURT: Well, we can pull you back in if we need
17 you, all right? I mean, I'll talk to Judge Trenga for you.

18 MR. CHARNOFF: I appreciate that.

19 THE COURT: All right. And, Mr. Grell, how about
20 you? Or Mr. Urban can be here in your stead. I mean --

21 MR. GRELL: I'm here for the duration.

22 THE COURT: You're here for the duration, all right.
23 Well, maybe they'll get through it, but if they're
24 going exhibit by exhibit, they're going to be here quite a
25 while.

1 All right, we'll get this to you in a second. We'll
2 recess court.

3 (Recess from 3:49 p.m., until 6:01 p.m.)

4 (Jury present.)

5 THE COURT: All right, ladies and gentlemen, I know
6 you've had a long day, and we certainly appreciate the care
7 you're exhibiting and the questions you've asked us, so we know
8 you're looking very carefully at the evidence and considering
9 the instructions very carefully.

10 So I know you want to go home tonight, and hopefully
11 there will not be any rain until you get home. But again, the
12 schedule for tomorrow is the same as today. The jury is going
13 to start at ten. Again, we just start by having you come in
14 here just so I can say good morning to you, make sure
15 everything is okay, and then the same mid-morning break at
16 11:30 for 15 minutes, lunch from one to two, an afternoon break
17 at 3:30, and the day will end at six. That's the plan for
18 tomorrow for scheduling purposes.

19 So, folks, continue, please, to remember my cautions.
20 Don't try to communicate with each other. Don't conduct any
21 investigation. I'm sure by this point, some of your family or
22 friends are saying, what are you-all doing?

23 Do not talk to them about what you're doing other
24 than you can say, I'm still on jury duty.

25 And we'll see you back here tomorrow at ten. But

1 you-all may go, and we'll recess court for the day.

2 (Recess from 6:02 p.m., until 10:00 a.m., August 18, 2021.)

3
4 CERTIFICATE OF THE REPORTER

5 I certify that the foregoing is a correct transcript of
6 the record of proceedings in the above-entitled matter.

7
8
9 /s/
10 _____
Anneliese J. Thomson